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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.

Plaintiff, Counter-defendant

v.

APPLE INC.,

Defendant, Counterclaimant

Case No. 4:20-cv-05640-YGR

**DECLARATION OF MARK A. PERRY IN
SUPPORT OF DEFENDANT APPLE INC.'S
ADMINISTRATIVE MOTION TO SEAL**

The Honorable Yvonne Gonzalez Rogers

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I, Mark A. Perry, hereby declare as follows:

1. I am an attorney licensed to practice in the State of California, and a member of the Bar of this Court. I am a partner at the law firm Weil, Gotshal & Manges LLP, counsel of record for Defendant Apple Inc. (“Apple”) in this case. I am familiar with Apple’s treatment of highly proprietary and confidential information, based on my personal experience representing Apple.¹ I have personal knowledge of the facts stated below and, if called as a witness, would testify competently thereto. I submit this declaration in support of Apple’s Administrative Motion to Seal its Reply In Support of Apple’s Motion for Entry of Judgment on its Indemnification Counterclaim (the “Motion”) and concurrently filed declarations.

2. A party seeking to seal information must exhibit “compelling reasons” to overcome the “strong presumption in favor of access.” *Kamakana v. City & Cty. Of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quotation marks omitted). These “compelling reasons” must be “supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosures.” *Id.* at 1178–79 (citation and quotation marks omitted). “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest in disclosure and justify sealing court records exist when such ‘court files might have become a vehicle for improper purposes,’ such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets.” *Id.* at 1179 (citing *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)).

3. Apple operates in an intensely competitive marketplace. Apple has serious and legitimate concerns that competitors will be quick to capitalize on any release of Apple’s highly sensitive information in order to gain competitive advantage. As such, Apple takes extensive measures to protect the confidentiality of its information.

4. The Court has “broad latitude” “to prevent disclosures of materials for many types of

¹ Courts in this District and in the Ninth Circuit routinely grant motions to seal on the basis of declarations of counsel. *See, e.g., in re Qualcomm Litig.*, No. 17-00108, Dkt. 398-1 (S.D. Cal. Mar. 3, 2018); *Avago Techs. U.S. Inc., et al v. Iptronics Inc., et al.*, No. 10-02863-EJD, Dkt. 544 (N.D. Cal. Apr. 3, 2015); *VCisco Sys., Inc., et al. v. Opentv Inc., et al.*, No. 13-00282-EJD, Dkt. 76 (N.D. Cal. Oct. 8, 2018). I am personally familiar with Apple’s safeguarding of proprietary information, but if the Court deems this declaration insufficient, Apple respectfully requests that it be permitted to file a further declaration supporting filing under seal.

information, including, *but not limited to*, trade secrets or other confidential research, development, or confidential information.” *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (emphasis in original).

5. Apple has carefully reviewed its Reply in Support of Apple’s Motion for Entry of Judgment on its Indemnification Counterclaim (the “Reply”), the supplemental declaration of Mark Rollins (the “Rollins Supplemental Declaration”), and the declaration of Mark A. Perry (the “Perry Declaration”), and now proposes only those redactions and requests to fully seal documents that are essential.

6. Specifically, Apple seeks to seal information from only two categories of confidential information: (1) competitively sensitive, non-public billing policy information revealing Apple’s internal processes and systems for conducting litigation and managing vendor billing; and/or (2) competitively sensitive, non-public financial information regarding Apple’s aggregate costs for the *Epic* litigation.

Category 1: Apple’s Request as to Information that Reflects its Competitively Sensitive Internal Billing Policies, Processes, and Systems

7. Apple first seeks to seal information regarding its confidential, internal billing policies, which reflect Apple’s strategy and systems for conducting litigation and managing its vendors. Apple has narrowly tailored its sealing request so as to maximize the public’s access to court documents without jeopardizing Apple’s business interests.

8. Public disclosure of this information, which Apple intended to keep confidential, could put Apple at a competitive disadvantage and thus cause economic harm, because it would reveal Apple’s proprietary inner billing processes and how it works with its vendors.

9. Below is a chart detailing the specific portions of the Reply and Rollins Supplemental Declaration that are sealable under this category for the reasons explained herein, as well as in the Motion.

Portion of Document Sought to be Sealed	Document Title	Reason to Seal
10:4	Reply	Reflects information regarding Apple’s confidential, internal billing policies and procedures.
10:6	Reply	Reflects information regarding Apple’s confidential, internal

		billing policies and procedures.
10:7–8	Reply	Reflects information regarding Apple’s confidential, internal billing policies and procedures.
1:14–15	Rollins Supplemental Declaration	Reflects information regarding Apple’s confidential, internal billing policies and procedures.
1:17–21	Rollins Supplemental Declaration	Reflects information regarding Apple’s confidential, internal billing policies and procedures.
2:3–4	Rollins Supplemental Declaration	Reflects information regarding Apple’s confidential, internal billing policies and procedures.
2:6	Rollins Supplemental Declaration	Reflects information regarding Apple’s confidential, internal billing policies and procedures.
2:9	Rollins Supplemental Declaration	Reflects information regarding Apple’s confidential, internal billing policies and procedures.

Category 2: Apple’s Request as to Information that Reflects Apple’s Financial Information Relating to Costs Expended by Apple in the *Epic* Litigation and the *Cameron and Pepper* Litigation

10. Second, Apple seeks to seal competitively sensitive, non-public financial information regarding Apple’s aggregate costs for the *Epic* litigation and the *Cameron and Pepper* litigation,² which, if disclosed, would provide competitors with an unfair advantage against Apple. Apple has narrowly tailored its sealing request so as to maximize the public’s access to court documents without jeopardizing Apple’s business interests, or that of its vendors.

11. Below is a chart detailing the specific portions of the Reply and Rollins Supplemental Declaration that are sealable under this category for the reasons explained herein, as well as in the Motion.

Portion of Document Sought to be Sealed	Document Title	Reason to Seal
10:8–9	Reply	Reflects non-public financial information regarding Apple’s aggregate costs for its litigation expenses in the <i>Cameron and Pepper</i>

² *Donald Cameron v. Apple Inc.*, 4:19-cv-3074-YGR (*Cameron*) and *In Re Apple iPhone Antitrust Litigation*, 4:11-cv-6714-YGR (*Pepper*).

		litigation.
1:22	Rollins Supplemental Declaration	Reflects non-public financial information regarding Apple's aggregate costs for its litigation expenses in the <i>Cameron and Pepper</i> litigation.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 1st day of March 2024, in Washington, D.C.

Dated: March 1, 2024

Respectfully submitted,

By: /s/ Mark A. Perry

Mark A. Perry